



**Montana Department of Transportation**  
**PO Box 201001**  
**Helena, MT 59620-1001**

**MEMORANDUM**

**To:** See Distribution  
**From:** Kevin Christensen, P.E.  
Construction Engineer  
**Date:** December 29, 2008  
**Subject:** Supplemental Specification Addition: 108.10.2 Payment (Termination), 109.05 Deleted or Terminated Work

The Construction Administration Services Bureau is proposing changes to Standard Specifications 108.10.2 Payment and 109.05 Deleted or Terminated Work following the Standard Specification Revision Process outlined in the Construction Engineer's Memorandum dated May 2008. The following information is provided.

1. 108.10.2 Payment and 109.05 Deleted or Terminated Work will be modified.
2. The Proposed Draft of the change is attached along with this memorandum.
3. Revisions to the Standard Specifications are needed to properly define contractor's responsibilities and requirements regarding termination of contracts.
4. Those impacted by the change include:  
Construction, Contractors
5. The following individuals were consulted and/or involved in developing the proposed revisions:  
CAS, CES Bureau

*It is requested that written comments on **the proposed revisions only**, be returned to [mdtspecifications@mt.gov](mailto:mdtspecifications@mt.gov) no later than 1-30, 2009.*

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**108.10.2 Payment**

Payment will be made for the actual work performed at the contract unit prices for completed items of work when the contract is terminated under Subsection 108.10.1. Payment will not be made for materials delivered or stockpiled, or work performed, which do not comply with the contract's specifications, even if the contractor says that it would eventually be brought into specification.

Subject to the above, an equitable adjustment for partially completed items of work and disposal of materials will be made under Subsection 109.05.

Submit to the Engineer a claim for termination costs after receipt of the notice of Termination for Public Convenience, under Subsection 108.10.1(A). Detail the claim as specified in Subsection 105.16.2 so the Engineer can determine the basis and amount of the claim. Submit the claim no later than 60 calendar days from the effective date of termination. Resolution of the claim will be through the established administrative channels. If the claim cannot be resolved and an agreement reached, appeal the claim under Subsection 105.16.3. Make all project records available to verify the claim.

**109.05 DELETED OR TERMINATED WORK**

The Engineer may delete work by change order under Subsection 104.02.4 or may terminate the contract in whole or part, under Subsection 108.10. When the contract is terminated in part, the partial termination is treated as a deletion change order for payment under this Section. Payment for completed items is at the contract unit prices.

When any item is deleted, in whole or in part, by change order or when the contract is terminated, in whole or in part, payment for deleted or terminated work is made as follows:

1. Payment will be made for the actual number of units of work completed and meeting all contract requirements at the contract unit prices unless the Engineer determines the contract unit prices are inappropriate for the work actually performed. When that determination is made, payment for work performed will be as mutually agreed. If the parties cannot agree, the Engineer will determine the amount or the equitable adjustment under Subsection 109.04.3.
2. Payment for partially completed lump sum items that meet contract requirements will be as mutually agreed. If the parties cannot agree, the Engineer will determine the amount of the equitable adjustment under Subsection 109.04.3.
3. The Department will pay as part of the equitable adjustment those direct costs necessarily and actually incurred in anticipation of performing the work that has been deleted or terminated. Costs previously paid for by the contract unit prices for completed units of work are excluded.
4. The total payment for any one item in the case of a deletion or partial termination can not exceed the contract unit price as modified by approved change orders less the estimated cost (including overhead and profit) to complete the work and less any amount paid to the Contractor for the item.
5. The total payment where the contract is terminated will not exceed the total contract price, as modified by approved change orders less those amounts paid before the effective date of termination.

No claim for damages of any kind or for loss of anticipated profits on deleted or terminated work is allowed because of the termination or change order.

Contract time will be adjusted as the parties agree. If the parties cannot agree, the Engineer will determine the equitable adjustment for contract time.

Materials to be permanently incorporated into the work and ordered before the date the work was terminated under Subsection 108.10 or as deleted under Subsection 104.02, will either be purchased by the Department at the actual cost and become Department property, or the Contractor will be reimbursed for the actual cost of returning the materials to the suppliers.